

Region 8 RA/DRA Issue Paper:

Ex. 5 - Deliberative Process

Clean Air Act General Conformity Programs in the Upper Green River Basin Ozone Nonattainment Area

The Region has an opportunity to comment on BLM proposed actions in Wyoming's ozone nonattainment area. BLM proposes exempting categories of sources from Clean Air Act general conformity requirements based on an interpretation of EPA's regulations that is inconsistent with our interpretation. This paper includes the following:

- Background on general conformity
- Chronology of key events in the Upper Green River Basin (UGRB)
- Key issues regarding one proposed project in the UGRB (the Naturally Pressurized Lance, or NPL, a 10-year and up to 3,500 natural gas wells project)
- Options for EPA to respond to BLM's request for comments on their General Conformity analysis for the NPL project.

A.) Background

General Conformity Background:

- 1.) The General Conformity program ensures that the actions conducted or sponsored by federal agencies in nonattainment and maintenance areas are consistent with state/tribal/federal air quality plans established to protect human health and the environment.
- 2.) Established under CAA section 176(c), the General Conformity rule at 40 CFR 93, Subpart B, requires that federal agency projects "conform" to the state/tribal/federal implementation plan.
- 3.) Under the Rule, federal agencies must work with State, Tribal, Federal and local government in nonattainment and maintenance areas to ensure that emissions of air pollutants from planned federal activities do not:
 - (1) Cause new violations of the NAAQS;
 - (2) Increase the frequency or severity of NAAQS violations; or
 - (3) Delay timely attainment of the NAAQS or any interim milestone.
- 4.) EPA's initial General Conformity rule was adopted in November, 1993, and revised in April, 2010. EPA regional and headquarters offices routinely work with other federal agencies to address questions that arise under the program.
- 5.) Federal agency actions that are subject to General Conformity must comply with any applicable General Conformity requirements prior to the Federal Agency providing financial assistance, licenses, permits, or approvals.

- 6.) We note that General Conformity requirements are separate from NEPA provisions. However, due to the similarity of information compiled and analyzed for a particular project's DEIS/FEIS, federal agencies often develop the conformity analysis information / determination as part of the NEPA process or in parallel to the NEPA process.

Wyoming General Conformity Background:

- 7.) In May, 2012, EPA designated the Wyoming Upper Green River Basin (UGRB) nonattainment for the 2008 8-hour ozone NAAQS. A one-year grace period, before the general conformity requirements would apply, began when the nonattainment designations became effective in July, 2012.
- 8.) Wyoming DEQ (WDEQ) revised the State's general conformity rule to incorporate the latest EPA general conformity rule revisions (as promulgated by EPA in April, 2010). EPA approved Wyoming's general conformity SIP revision with a final rule that published on August 15, 2013; effective September 16, 2013.
- 9.) Our approval of the revisions to Wyoming's general conformity rule also included the provisions from EPA's rule that allow a federal agency to exempt the emissions from inclusion in a general conformity analysis and/or conformity determination from those stationary sources that obtain a major or minor NSR or PSD permit under an EPA approved state permit program. Wyoming has such an approved permit program. Sources covered by this exemption are those that meet the definition of stationary sources. We note that for WDEQ permits issued for sources in the UGRB additional requirements to obtain emissions offsets apply as provided in the WDEQ's 2008 Interim Permit Policy (although the policy is not part of the EPA-approved State Implementation Plan (SIP)).

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- 10.) The State explained their interpretation of the permit exemption provision by way of their January 31, 2014 letter, from Steve Dietrich (WDEQ) to Charis Tuers (BLM), which specifically states the WDEQ's position on this issue:

- *"Sources with permits issued under the authority of Wyoming's EPA approved new source review permitting program (WAQSR Chapter 6, Section 2) are exempt from a general conformity determination."*

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B.) Key Issues for the NPL Project:

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- 2.) After numerous discussions and correspondence (prior conference calls, meetings, and emails), this issue continues with the BLM and WDEQ regarding the use of stationary source permits for non-stationary sources and activities for purposes of general conformity.

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C.) Potential Options for responding to the BLM-WY's request for comments on their Draft General Conformity analysis for the NPL project:

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